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Part V

Department of Transportation

Research and Special Programs Administration

49 CFR Part 107, et al.
Transportation of Hazardous Materials; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 175, 177, and 178

[Docket No. HM-166X; Amdt. No. 107-30, 171-122, 172-132, 173-235, 175-50, 177-81, and 178-100]

RIN 2137-AA44

Transportation of Hazardous Materials; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This action is being taken to incorporate into the Department's Hazardous Materials Regulations (HMR) a number of changes based on rulemaking petitions from industry and other agencies, and RSPA initiative. This action is necessary to update the regulations and to respond to petitions for rulemaking. The intended effect of these regulatory changes is to improve safety and to reduce costs to shippers and carriers of hazardous materials.

DATES: *Effective*: October 1, 1993.

Compliance date: However, compliance with the regulations, as amended herein, is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Diane LaValle, (202) 366-8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: On August 7, 1991, RSPA published a notice of proposed rulemaking under Docket No. HM-166X, Notice No. 91-3 (56 FR 37505), proposing a number of miscellaneous amendments to the HMR, 49 CFR parts 171-180. Notice No 91-3 included a brief statement concerning each proposal and invited public comment.

Twelve commenters responded to Notice No. 91-3. These commenters represented shippers, carriers, trade associations, and public interest groups. While a number of commenters expressed support for various proposals, several commenters expressed concern and offered suggestions for specific changes. Listed below is a section-by-section summary of the changes made under the final rule and, where applicable, a discussion of comments received.

The amendments adopted herein are effective without the customary 30-day delay following publication to allow these changes to appear in the next revision of 49 CFR.

Part 107

In § 107.331, paragraph (d) is amended by adding the parenthetical expression "(violations)" immediately after the words "prior offenses" for clarity. These words, i.e., "offense" and "violations," are used interchangeably in the Hazardous Materials Transportation Act (HMTA) and in the HMR.

Part 171

In § 171.7, RSPA proposed to amend the table in paragraph (a)(3) by replacing the reference to the 1988 edition of the AAR Specification for Tank Cars, Specification M-1002, with a reference to the 1990 edition. Since publication of Notice 91-3, RSPA has been petitioned to update this reference to the 1992 edition. RSPA plans to adopt the 1992 edition under a separate rulemaking action in the near future.

In § 171.8, a discrepancy in the definition for "solid" is corrected by clarifying that for a material to be a solid it may not have a separation of one gram of liquid or more when tested in accordance with ASTM D 4359 "Standard Test Method for Determining Whether a Material is a Liquid or Solid."

Part 172

In part 172, the § 172.101 Hazardous Materials Table (the Table) is amended by adding "173.304" in column 8B as a packaging section reference in the entries, "Carbon dioxide, refrigerated liquid" and "Nitrous oxide, refrigerated liquid," and by revising the packaging section references in columns 8A and 8B for "Fire extinguishers" from "173.306" to "173.309." The Table is also amended by removing the "AW" from column 1 for the entry "Batteries, wet, non-spillable, *electric storage*" to clarify that the exceptions in § 173.159 apply to all modes.

In § 172.400a, paragraph (a)(1) is revised to include an exception from labeling for dewar flasks conforming to § 173.320(a) and containing oxygen, refrigerated liquid *(cryogenic liquid)*, when properly marked in accordance with CGA Pamphlet C-7, appendix A.

In § 172.401, the introductory text to paragraph (a) is revised and, for consistency with requirements contained in § 173.29(d), a new § 172.401(d) is added to clarify that empty packagings not containing hazardous material residues may bear hazard warning labels if transported in closed transport vehicles.

Part 173

In § 173.7, paragraph (b) is broadened to except national security shipments of hazardous materials, in addition to radioactive materials, from the requirements of the HMR. Such shipments must be escorted by personnel in transport vehicles, other than those carrying the hazardous materials, and must be accompanied by a document certifying that the shipment is for national security. The exception in § 173.7 previously applied only to radioactive materials.

In § 173.31, paragraph (b)(4) is added to permit a tank car filled prior to expiration of the retest date to be offered for transportation, under certain conditions, after the retest date.

In § 173.32, paragraph (e)(5) is added to clarify that a portable tank filled prior to expiration of the retest date may be offered for transportation, under certain conditions, after the retest date.

Section 173.34(e)(15) allows DOT 3A and 3AA cylinders to be retested every 10 years instead of every 5 years if they are not over 35 years old when retested. RSPA proposed to revise § 173.34(e)(15)(i) to remove the 35-year age restriction for DOT 3A and 3AA cylinders manufactured after December 31, 1945. A commenter stated that the proposed wording was confusing. Another commenter requested that the provision not be limited to cylinders manufactured after 1945. RSPA does not agree with the latter commenter, however the provision has been editorially revised for clarity. Also in § 173.34, paragraph (e)(18) is added to specify retest requirements for cylinders used as fire extinguishers. These fire extinguisher requirements are addressed in more detail in the preamble discussion to § 173.309.

In § 173.62(c), the Table of Packing Methods, a provision in "US006" authorizing the transportation of jet perforating guns, charged, by private motor carriers is broadened to include contract carriers.

RSPA proposed to revise § 173.159(d) to require that wet, electric storage batteries meeting the "nonspillable" test criteria be marked "DOT NONSPILLABLE BATTERY." After further consideration, RSPA has decided that the marking be shortened to "NONSPILLABLE" or "NONSPILLABLE BATTERY" to eliminate the distinction of "DOT" and to take into consideration limited space that may be available for this marking. A commenter requested that RSPA require this marking to be placed on the top and two sides of the battery. RSPA disagrees with the commenter. RSPA

believes that a single visible marking on the battery provides sufficient communication, and that requiring the marking to appear in three locations is an unnecessary burden on shippers and battery manufacturers. One commenter expressed concern over the testing procedures used to determine if a battery is nonspillable. RSPA believes that this comment may have merit, but it is beyond the scope of this rulemaking action. Except for removal of the introductory clause, which would have excluded transportation by aircraft and vessel, the provision is adopted in this final rule as proposed. The marking provisions, however, are required only for batteries manufactured after September 30, 1995.

In § 173.185, proposed paragraph (k) was to be added to grant an exception to certain DOD shipments of lithium batteries transported for disposal. This proposal is broadened to include batteries that are other than DOD shipments. This proposal is adopted as paragraph (h) in this final rule for large discharged batteries meeting specified criteria which are similar to requirements for small charged lithium batteries not regulated under the current HMR.

In § 173.304(a)(2), the table is revised to authorize the transport of "Carbon dioxide, refrigerated liquid" and "Nitrous oxide, refrigerated liquid" in DOT 4L cylinders. Proposed paragraph (g) containing pressure control valve settings for these materials is adopted as paragraph (h).

In § 173.306, paragraph (c) is removed and reserved. The requirements in § 173.306(c) are moved to § 173.309 and expanded to authorize certain DOT specification cylinders to be transported under the proper shipping name "fire extinguishers" instead of the proper shipping name for the particular gas contained within the cylinder. A commenter requested revisions to proposed § 173.309(b)(1) to: (1) Authorize other non-corrosive extinguishing agents; (2) authorize DOT 4BA cylinders; and (3) allow all low pressure fire extinguishers to be retested every 12 years using the modified hydrostatic test method.

RSPA agrees with the commenter that the use of other recognized fire extinguishing agents and DOT 4BA cylinders should be permitted, and has revised the final rule. RSPA also agrees that the retest requirements should be relaxed. However, RSPA has no basis for extending the retest period to 12 years for all cylinders when using the modified hydrostatic test method. RSPA issued exemption DOT-E 8886 to authorize longer retest intervals for certain DOT specification cylinders when used as fire extinguishers. The exemption authorizes a 12-year retest interval, using either the modified or full hydrostatic test, for a cylinder having a capacity of 12 pounds or less. Cylinders having a capacity over 12 pounds must be requalified every 12 years using the full hydrostatic test, or may be given a modified hydrostatic test 12 years after the expiration of the original test date and once every seven years thereafter. Based on the satisfactory safety experience regarding the cylinders authorized under the exemption, RSPA is authorizing these same conditions for DOT specification cylinders in this final rule.

Finally, the commenter requested that the listed DOT 3A and 3AA cylinders be removed because current retest intervals in the HMR for high pressure cylinders, such as the 3A and 3AA, are already in agreement with requirements found in the Department of Labor's Occupational Safety and Health Administration Regulations found in 29 CFR 1910.157 and the National Fire Protection Association's NFPA 10. The commenter's statement is true, provided the high pressure cylinders fully conform to all requirements in § 173.309, including the cylinder capacity and pressure limitations. RSPA included the DOT 3A, 3AA and 3AL cylinders to permit the transport of larger cylinders using the proper shipping name "Fire extinguishers" instead of the particular name of the gas contained within the cylinder. Therefore, the proposal to include DOT 3A and 3AA cylinders is retained and DOT 3AL cylinders are added and adopted in this final rule.

In § 173.314, RSPA proposed to add a paragraph (g)(3) to require that tank cars containing a residue of hydrogen chloride, refrigerated liquid be unloaded so that any residue remaining in the tank, when vaporized, will not actuate the safety relief device at 21°C (70°F) during transportation. A commenter requested that the pressure for actuating the safety device on these tank cars be specified at 32°C (90°F) rather than 21°C (70°F) in consideration of the warmer climate in the south where most transportation of this material occurs. RSPA agrees with the commenter that the safety relief device should be set to accommodate warmer climates. This provision is revised and adopted as paragraph (g)(4).

In § 173.318, paragraph (g) is revised to permit use of the abbreviation "OWTT" for "One-way-travel-time."

In § 173.423, Table 7 is amended by:

(1) Correcting a printing error, i.e., the wording "Other liquids" is indented the same number of spaces as "Tritiated water;" and

(2) By making an editorial correction in the second entry for "Tritiated water"; i.e., changing "Ci/l" to "Ci/liter."

Part 175

Part 175 is amended, as follows. Several editorial changes are made for consistency with changes adopted under another rulemaking (Docket No. HM-181). In § 175.10, RSPA proposed to revise paragraph (a)(7) to clarify that the referenced sections, 14 CFR 121.574 and 135.91, authorize only airline-supplied oxygen or oxygen generators to be used by passengers onboard an aircraft. The Air Transport Association (ATA) stated that foreign carriers are required to comply with 14 CFR part 129 and requested clarification that paragraph (a)(7) applies only to U.S. air carriers. ATA further stated that carriage of oxygen under the provisions of the International Civil Aviation Organization's (ICAO) Technical Instructions for the Safe Transport of Dangerous Goods by Air should be permitted.

RSPA notes that ICAO 9.1.2 permits passengers to carry their own oxygen bottles, if approved by the aircraft operator. RSPA does not agree with ATA's position. While foreign air carriers must comply with 14 CFR part 129, the exception in § 175.10(a)(7) from all requirements of the HMR pertaining to the carriage of oxygen for use by passengers on-board an aircraft in U.S. airspace is contingent upon the carrier's compliance with requirements specified in 14 CFR 121.574 and 135.91. Those provisions were adopted in rulemaking action based on commenter's concerns that allowing passengers to provide their own cylinders poses significant risks [December 6, 1974; 39 FR 42675]. Allowing passengers to bring on-board their own high pressure gaseous oxygen units, which are uncontrolled and could be contaminated with grease, oil, or other organic materials, would create a potential for a serious fire. There is no way to ensure that these units have not been contaminated during maintenance or refilling. Thus, it is impossible for an airline operator, and sometimes even the owner, to know how a piece of equipment has been serviced, altered, or repaired, i.e., whether cleanliness has been observed in its filling, and whether it has been subjected to abuse, resulting in damage. Since adoption of the requirements, RSPA is not aware of any changes in technology or handling that would reduce these risks. Therefore, RSPA does not agree that conformance to ICAO 9.1.2 should be permitted

instead of conformance to 14 CFR 121.574 and 135.91. However, in the case of foreign operators and domestic operators that are not part 121 or 135 certificate holders, RSPA has revised § 175.10, paragraph (a)(7) to allow an aircraft operator entering the U.S. from a foreign destination to conform to the provision in 14 CFR 121.574 or 135.91, in the same manner as a certificate holder, or in accordance with ICAO 9.1.2.

As proposed in the notice, in § 175.10, in paragraphs (a)(12) (ii) and (v), the phrase "aviation security program" is replaced with the phrase "hazardous materials program." Also, paragraph (a)(12)(v) is revised to reflect that some States do not have licensing requirements for blasters. The introductory text of paragraph (a)(12) is revised and paragraph (a)(12)(vi) is added to provide for the transportation and routine testing of certain special fireworks manufactured for DOD, based on DOT-E 7648.

In § 175.10, RSPA proposed to revise paragraph (a)(19), which addresses the transport of wheelchairs equipped with nonspillable batteries, to clarify that a nonspillable battery may be removed from a wheelchair and packaged separately, if necessary (e.g., if the battery is not adequately secured to the wheelchair), and to require that both battery and packaging, if any, be marked "NONSPILLABLE BATTERY."

ATA commented that, for a battery enclosed within a housing, there are instances when an airline agent will need to remove the battery from its housing to assure that it is in proper condition for transportation. ATA requested confirmation from RSPA that removal of a wheelchair battery for such inspections is authorized under the HMR. The Paralyzed Veterans of America (PVA), in its comments on behalf of seven other national organizations representing persons with disabilities, supported the "NONSPILLABLE BATTERY" marking requirements on the basis that it would aid both transportation personnel and persons with disabilities in identification of nonspillable batteries. However, PVA opposed the removal of a nonspillable battery unless the battery has been damaged or the wheelchair cannot be lifted or stored in an upright position. PVA stated that if a wheelchair battery must be removed, the airline should have qualified personnel to perform the task and be responsible for the return of the intact battery. PVA submitted documents citing numerous instances where wheelchair batteries have been damaged or lost, thus, hampering the mobility of passengers.

RSPA did not propose the removal of wheelchair batteries as a standard operating procedure. In the preamble discussion in Notice No. 91–3, RSPA stated that the intent of the change was "to clarify that a nonspillable battery may be removed from the wheelchair and packaged separately, if necessary (e.g., if the battery were not adequately secured to the wheelchair)." RSPA requires removal and packaging of spillable batteries only for wheelchairs that cannot be stored in an upright position; however, DOT encourages the upright orientation of all batteries, including non-spillable, to avoid damage and reduce the need to remove batteries from wheelchairs. The provisions addressing the stowage of electric-powered wheelchairs on an aircraft contained in 14 CFR § 382.41(g)(2) reads, in part: "Whenever feasible, the carrier shall transport electric-powered wheelchairs secured in an upright position, so that batteries need not be separated from the wheelchair in order to comply with DOT hazardous materials rules."

ATA objected to the proposal for marking "DOT NONSPILLABLE BATTERY" on the housing. ATA stated that a person could replace a nonspillable battery with a spillable battery or, conversely replace a spillable battery with a nonspillable battery and fail to remark the housing. However, if all wheelchair batteries are visually inspected, marking the housing would be unnecessary because each battery would be marked. RSPA agrees and has eliminated the need to mark "NONSPILLABLE BATTERY" on the housing. ATA expressed a different concern to the proposal for marking "DOT NONSPILLABLE BATTERY" on packagings. They stated that for economic reasons, most airlines are likely to package all batteries in the same manner, i.e., in packagings marked "Battery, wet, with wheelchair." ATA claims that this procedure streamlines the airlines' packaging inventory and provides a measure of safety in the event a battery leaks or is damaged in transportation. Therefore, ATA recommended that the proposal be revised to allow packagings used for nonspillable batteries to be marked either "DOT NONSPILLABLE BATTERY" or "Battery, wet, with wheelchair." RSPA agrees and has added this allowance to § 175.10(a)(19).

Also, RSPA proposed to revise paragraph (a)(19) to broaden the provisions to include battery-powered mobility aids other than wheelchairs, for consistency with the ICAO Technical Instructions.

RSPA proposed to revise § 175.10(a)(20), addressing wheelchairs equipped with spillable batteries, to clarify that a liner may be used to render a packaging leak-tight and impervious to battery fluid, to delete the requirement that the absorbent material in the package must "surround" the battery, and to delete the term "outside" to remove any inference that the packaging is a combination packaging. ATA requested that the revision clarify that, if a liner is used to render the packaging leak-tight, the absorbent material need not completely surround the battery on all six sides. RSPA agrees with ATA that the absorbent material need not completely surround the battery when a leak-tight liner is used. RSPA has revised paragraph (a)(20) accordingly. This paragraph has also been broadened to include battery-powered mobility aids other than wheelchairs, for consistency with the ICAO Technical Instructions.

Finally, in § 175.10, paragraph (a)(25) is added to provide that a small carbon dioxide cylinder fitted into a life jacket, may be carried by a passenger or crew member in checked or carry-on baggage, with the approval of the aircraft operator. This change is consistent with requirements contained in the ICAO Technical Instructions.

Section 175.25 requires commercial passenger aircraft operators to display signs at prominent locations within airports to alert passengers, who may be carrying undeclared hazardous materials aboard the aircraft, of restrictions and penalties. Notice No. 91–3 proposed to revise § 175.25 to require that the signs be "prominently displayed in visible airport locations and be seen by passengers." ATA stated that, as worded, the proposal would require that the aircraft operator be responsible for assuring that the signs are seen by passengers which would be impossible. RSPA agrees with ATA. The intent of the requirement is that the signs be displayed in locations where they are visible to passengers. The provision is revised and adopted in this final rule.

RSPA proposed to add a new § 175.26 which would require that air cargo operators prominently display warning notices alerting customers of the requirements for offering hazardous materials for transportation aboard aircraft, and the penalties for violations of the HMR. This proposal was initiated by RSPA and the Federal Aviation Administration (FAA) in response to a National Transportation Safety Board (NTSB) recommendation (A–88–120) that DOT should require hazardous materials restriction notices to be posted

at all air transportation freight acceptance facilities, including air freight forwarder facilities. NTSB made the recommendation after conducting an investigation into an incident involving an improperly packaged and undeclared air shipment that was offered for transportation to an aircraft operator by an air freight forwarder. As a part of its investigation, NTSB reviewed all hazardous materials incident reports involving air transportation, in particular those involving undeclared shipments.

ATA expressed full support for the intent of the proposal, and stated that possibly the greatest hazardous materials risk in aviation is created by undeclared hazardous materials. However, ATA had serious concerns with the proposal relative to the location of the cargo notices at facilities, text, format, and language.

ATA stated that a key issue is the prescribed location of the cargo notices at various facilities. ATA objected to the wording, in proposed § 175.26(a), that "such notices shall be prominently displayed in each location where the operator conducts cargo operations and accepts cargo for transport by aircraft." ATA stated that air cargo is accepted in at least five general locations: (1) At an air carrier's cargo facility, (2) at a facility operated by an air freight forwarder or courier, (3) at a customer's facility (where RSPA could not reasonably expect the operator to display a cargo notice), (4) at the passenger ticket counter in smaller stations, and (5) at a drop box maintained by an integrated operator. ATA stated that air freight forwarders play a significant role in receiving cargo for ultimate carriage aboard aircraft and are, therefore, important links in the transportation chain. Consequently they should not be excepted from a requirement to advise customers of the hazardous materials requirements. Moreover, NTSB had specifically identified air freight forwarder operations as needing to display warning signs. ATA requested that RSPA add a provision in part 171 clarifying that air freight forwarders must comply with the requirement to display hazardous materials information in § 175.26(a).

RSPA and FAA agree with ATA that the provision should include air freight forwarders. The intent of § 175.26 is to require that notices be displayed to alert all persons who offer hazardous materials for transportation by aircraft of the HMR requirements for shipments aboard aircraft. RSPA has revised proposed § 175.26(a) to more clearly state that the requirement applies to each person who offers or accepts cargo for transportation by aircraft. RSPA does not agree that a revision to part 171 is necessary.

ATA stated that one of the greatest challenges to air carriers in displaying passenger information notices has been reluctance by airport operators to authorize the placement of notices in prominent locations. ATA stated that the problem has been minimized through cooperation among local airline managers, FAA, and airport operators. However, should RSPA require cargo notices in passenger terminals, in addition to the current passenger notices, difficulties in placing the notices in prominent locations could again occur. As an alternative to requiring cargo notices, particularly at smaller passenger terminals, ATA suggested that RSPA revise § 175.25 by removing the words "to passengers," and revising the section heading. RSPA and FAA agree with ATA that the display of separate passenger and cargo notices should not be required at passenger terminals. Therefore, RSPA has revised the wording in § 175.25, as suggested by ATA, to apply to passengers and other persons. This change allows the display of a single notice.

ATA stated that another complication arises with drop boxes maintained by certain integrated air cargo operators. The boxes are reserved exclusively for express document traffic. Placement of hazardous materials in such shipments is difficult, due to the limited apertures and restrictive envelopes available at such drop boxes. ATA, therefore, does not believe cargo notices are necessary at drop box locations. To avoid misunderstandings regarding any obligation to include notices at these locations, ATA suggested that such drop boxes display a prohibition against shipping hazardous materials through the drop box.

ATA objected to the text, format and type size of the proposed cargo notices. ATA stated that their posters communicate a short, simple message, rely more on graphics than written materials, and are more likely to catch a person's attention and identify the highlights of the regulations than the text proposed in § 175.26. Notice 91-3 would invalidate nearly 3,000 posters that ATA produced and distributed to the industry for display at cargo locations. They requested that RSPA focus more on whether the notices meet the intent of the proposed regulation rather than an exact specification contained in the rule. American Airlines stated that the proposal was too restrictive and, as a result, penalizes operators who voluntarily took the initiative to display warning notices at cargo facilities. American Airlines also pointed out that the NTSB investigation report recommends that the design, content and location of hazardous materials restriction notices be improved to attract the attention of passengers and shippers and to increase the effectiveness of the warning notices. American Airlines stated that its notice, referenced in the NTSB analysis, is identical to those posted in passenger terminals to satisfy the requirements of § 175.25, which NTSB found inadequate.

After further consideration, RSPA and FAA agree that the same results can be achieved by a performance-oriented approach, which focuses on whether a notice contains sufficient information to alert persons of applicable government regulations, violation of which could result in significant penalties. RSPA has, therefore, adopted § 175.26 which specifies the general information to be conveyed to the public, but leaves the format of that information to air carrier discretion.

ATA objected to requiring the cargo notices to be printed in English in all situations. ATA stated that if RSPA's intent is to require display of cargo notices in cargo acceptance locations of U.S. air carriers at foreign airports, then for those locations, the requirement to print the notices in English makes little sense because shippers and forwarders visiting those facilities may not be able to read English. ATA requested that the regulations allow, as an option, for the notices to be printed in the language of the host country. RSPA and FAA agree with ATA that notices may be printed in the language of the host country, however, this is in addition to being printed in English. RSPA revised the proposal to permit the posters to be printed in English and, additionally, in the language of the host country. The effective date for notices required by this section is October 1, 1994.

In § 175.78, paragraph (a) is revised to clarify that the stowage and segregation requirements apply to stowage facilities at airports.

In § 175.700, paragraph (b) is revised to require that an air carrier must notify a shipper of an incident involving hazardous materials no later than the close of business of the following work day.

Part 177

In Notice 91-3 it was proposed that § 177.804 be amended by removing the words "to the extent they apply" thereby eliminating confusion about the extent to which RSPA is incorporating into the HMR the Federal Motor Carrier

Safety Regulations (FMCSR), i.e., 49 CFR parts 390–397 (excluding §§ 397.3 and 397.9). After further consideration RSPA has decided to withdraw this amendment pending further consideration of Docket HM–200 (Hazardous Materials in Intrastate Commerce). However, a minor editorial revision has been made to the wording.

In § 177.806, paragraph (b) is broadened to except national security shipments of hazardous materials, other than radioactive materials, from requirements of the HMR. Such shipments must be escorted by personnel in transport vehicles, other than those carrying the hazardous materials, and must be accompanied by a document certifying that the shipment is for national security. The current exception in § 177.806(b) applies only to radioactive materials. This change is merely for consistency with the associated change made to § 173.7.

Part 178

Section 178.251–2, paragraph (a), containing requirements on materials of construction for DOT 56 and 57 portable tanks, is revised to allow caps or plugs used as secondary closing devices for discharge openings to be made of non-metallic material compatible with the intended lading.

Regulatory Analyses and Notices

A. Executive Order 12291 and DOT Regulatory Policies and Procedures

This final rule does not meet the criteria specified in section 1(b) of Executive Order 12291 and, therefore, is not a major rule. The rule is not considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034). A regulatory evaluation is available for review in the public docket.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 12612 ("Federalism"). The HMTA contains express preemption provisions (49 App. U.S.C. 1811) that preempt a non-Federal requirement if: (1) Compliance with both the non-Federal and the Federal requirement is not possible; (2) the non-Federal requirement creates an obstacle to accomplishment of the Federal law or regulations; or (3) it is preempted under 49 App. U.S.C. 1804(a)(4), concerning certain covered subjects, or 49 App. U.S.C. 1804(b), concerning highway routing. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

49 App. U.S.C. 1804(a)(4) (A) and (B).

This rule concerns the packing, marking, and handling of hazardous materials. This rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the Federal Register the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA determined that the effective date of Federal preemption for the requirements in this rule concerning covered subjects is April 1, 1995. Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

C. Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule has a minimal impact on persons who offer for transportation and transport hazardous materials.

D. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

List of Subjects

49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Packagings and containers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I, subchapters A and C of the Code of Federal Regulations, are amended to read as follows:

SUBCHAPTER A—HAZARDOUS MATERIALS TRANSPORTATION, OIL TRANSPORTATION, AND PIPELINE SAFETY

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c) 1653(d), 1655, 1802, 1804, 1805, 1806, 1808–1811, 1815; 49 CFR 1.45 and 1.53 and App. A of 49 CFR part 1.

§ 107.331 [Amended]

2. In § 107.331(d), the parenthetical expression "(violations)" is added immediately after the words "prior offenses" and before the semicolon.

SUBCHAPTER C—HAZARDOUS MATERIALS REGULATIONS

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

3. The authority citation for part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, 1805, 1808 and 1818; 49 CFR part 1.

4. In § 171.8, the definition for "Solid" is revised to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Solid means a material which has a vertical flow of two inches (50 mm) or less within a three-minute period, or a separation of less than one gram (1g) of liquid when determined in accordance with the procedures specified in ASTM D-4359, "Standard Test Method for Determining Whether a Material is a Liquid or Solid."

* * * * *

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

5. The authority citation for part 172 is revised to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR part 1, unless otherwise noted.

§ 172.101 [Table] [Amended]

6. In the § 172.101 Table, the entry "Batteries, wet, non-spillable, *electric storage.*" is amended by removing the "AW" from column 1.

7. In the § 172.101 Table, the entries "Carbon dioxide, refrigerated liquid" and "Nitrous oxide, refrigerated liquid" are amended by removing "None" and adding "304" in column 8B.

8. In the § 172.101 Table, the entry "Fire extinguishers *containing compressed or liquefied gas*" is amended by changing the section references in columns 8A and 8B from "306" to "309".

§ 172.400a [Amended]

9. In § 172.400a, paragraph (a)(1) introductory text is amended by adding the words "or Dewar flask conforming to § 173.320 of this subchapter" immediately after the word "cylinder" and before the word "containing".

10. In § 172.401, paragraph (a) introductory text is revised and paragraph (d) is added to read as follows:

§ 172.401 Prohibited labeling.

(a) Except as otherwise provided in this section, no person may offer for transportation and no carrier may transport a package bearing a label specified in this subpart unless:

* * * * *

(d) The provisions of paragraph (a) of this section do not apply to a packaging bearing a label if that packaging is:

(1) Unused or cleaned and purged of all residue;

(2) Transported in a transport vehicle or freight container in such a manner that the packaging is not visible during transportation; and

(3) Loaded by the shipper and unloaded by the shipper or consignee.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

11. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

12. In § 173.7, paragraph (b) is revised to read as follows:

§ 173.7 U.S. Government material.

* * * * *

(b) Shipments of hazardous materials, made by or under the direction or supervision of the U.S. Department of Energy (DOE) or the Department of Defense (DOD), for the purpose of national security, and which are escorted by personnel specifically designated by or under the authority of those agencies, are not subject to the requirements of this subchapter. For transportation by a motor vehicle or a rail car, the escorts must be in a separate transport vehicle from the transport vehicle carrying the hazardous materials that are excepted by this paragraph. A document certifying that the shipment is for the purpose of national security must be in the possession of the person in charge of providing security during transportation.

* * * * *

13. In § 173.31, paragraph (b)(4) is added to read as follows:

§ 173.31 Qualification, maintenance, and use of tank cars.

* * * * *

(b) * * *

(4) A tank car for which the retest has become due may not be filled and offered for transportation until it has been properly tested.

* * * * *

14. In § 173.32, paragraph (e)(5) is added to read as follows:

§ 173.32 Qualification, maintenance and use of portable tanks other than Specification IM portable tanks.

* * * * *

(e) * * *

(5) A portable tank for which the prescribed retest or reinspection under paragraph (e)(1) of this section has become due may not be filled and offered for transportation until the retest or reinspection has been successfully completed. This paragraph does not apply to any tank filled prior to the test due date.

* * * * *

§ 173.34 [Amended]

15. In § 173.34(e), for the Table entry "DOT 3A, 3AA," the wording in column 3 "(see § 173.34 (e)(10), (e)(14), and (e)(15))" is revised to read "(see § 173.34 (e)(11), (e)(14), (e)(15) and (e)(18))"; for the Table entry "4B, 4BA, 4BW, 4B-240ET" the wording in column 3 "(see § 173.34 (e)(9) and (e)(14))" is revised to read "(see § 173.34 (e)(9), (e)(14) and (e)(18))".

15a. In addition, in § 173.34, paragraph (e)(15)(i) is revised and paragraph (e)(18) is added to read as follows:

§ 173.34 Qualification, maintenance and use of cylinders.

* * * * *

(e) * * *

(15) * * *

(i) The cylinder is not over 35 years old when retested. However, this age restriction does not apply to cylinders manufactured after December 31, 1945.

* * * * *

(18) DOT specification cylinders used as fire extinguishers in compliance with § 173.309 are authorized to be retested in accordance with this paragraph. As part of the periodic retest, the retester must perform an external and internal visual inspection in accordance with CGA Pamphlet C-6. The cylinders must be carefully examined while under test pressure. Cylinders which satisfactorily pass a hydrostatic retest using the water jacket method must be marked in accordance with paragraph (e)(6) of this section or, if using the modified hydrostatic test method, be marked with the date of the retest (month and year) followed by the letter S. The retest must be as follows:

(i) For a cylinder having a water capacity of 12 pounds or less or for a DOT 3A or 3AA, without regard to size, by hydrostatic test using the water jacket method specified in paragraph (a)(3) of this section or by hydrostatic test without determination of expansion (modified hydrostatic test method). The first retest must be performed 12 years after the original test date, and at 12-year intervals thereafter;

(ii) For a cylinder having a water capacity over 12 pounds—

(A) By hydrostatic test without determination of expansion (modified hydrostatic test method). The first retest must be performed 12 years after the original test date, and at 7-year intervals thereafter; or

(B) By hydrostatic test using the water jacket method specified in paragraph

(e)(3) of this section. The first retest must be performed 12 years after the original test date, and at 12-year intervals thereafter.

* * * * *

§ 173.62 [Amended]

16. In § 173.62(c), in the Table of Packing Methods for the entry "US006," paragraph a. is removed, paragraph e. introductory text is amended by adding the phrase "or contract" immediately after the word "private" and before the word "carriers", and paragraphs b. through f. are redesignated as paragraphs a. through e., respectively.

17. In § 173.159, paragraphs (d)(1) and (d)(2) are redesignated as paragraphs (d)(3)(i) and (d)(3)(ii), respectively; paragraph (d) introductory text is revised; and new paragraphs (d)(1), (d)(2), and (d)(3) introductory text are added to read as follows:

§ 173.159 Batteries, wet.

* * * * *

(d) A nonspillable wet electric storage battery is excepted from all other requirements of this subchapter under the following conditions:

(1) The battery must be protected against short circuits and securely packaged;

(2) For batteries manufactured after September 30, 1995, the battery and the outer packaging must be plainly and durably marked "NONSPILLABLE" or "NONSPILLABLE BATTERY"; and

(3) The battery must be capable of withstanding the following two tests, without leakage of battery fluid from the battery:

* * * * *

18. In § 173.185, paragraph (l) is added to read as follows:

§ 173.185 Lithium batteries and cells.

* * * * *

(l) Lithium sulfur dioxide cells and batteries, for disposal, are not subject to the requirements for lithium batteries found in this subchapter under the following conditions:

(1) When new, each cell is electrochemically balanced with a ratio of lithium to sulfur dioxide of 1.0±0.1;

(2) Each battery is composed of not more than 10 cells;

(3) Each battery is discharged with a discharge device to less than 0.5 g (0.02 ounces) of lithium or lithium alloy per cell after complete discharge. The device must be able to completely discharge the battery in 5 days; and

(4) After being activated for discharge, the batteries are held not less than five days before being offered for transportation.

19. In § 173.304, the table in paragraph (a)(2) is amended by adding two entries in alphabetical sequence and paragraph (h) is added to read as follows:

§ 173.304 Charging of cylinders with liquefied compressed gas.

(a) * * *

(2) * * *

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Containers marked as shown in the column or of the same type with higher service pressure must be used except as provided in § 173.34(a), (b), § 173.301(j) (see notes following table)
* * * * *		
Carbon dioxide, refrigerated liquid (see paragraph (h)).	.....	DOT–4L
* * * * *		

Kind of gas	Maximum permitted filling density (percent) (see Note 1)	Containers marked as shown in th column or o the same type with higher service pressure must be used except as provided in § 173.34(a), (b), § 173.301(j) (see notes following table)
* * * * *		
Nitrous oxide, refrigerated liquid (see paragraph (h)).	.....	DOT–4L
* * * * *		

(h) Carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid. (1) The following provisions apply to carbon dioxide, refrigerated liquid and nitrous oxide, refrigerated liquid:

(i) DOT 4L cylinders conforming to the provisions of this paragraph are authorized.

(ii) Each cylinder must be protected with at least one pressure relief valve and at least one frangible disc conforming to §§ 173.34(d) and 173.304(a)(2). The relieving capacity of the pressure relief device system must be equal to or greater than that calculated by the applicable formula in paragraph 5.9 of CGA Pamphlet S–1.1.

(iii) The temperature and pressure of the gas at the time of loading may not exceed −18 °C (0 °F) and 2007 kPa (291 psig) for carbon dioxide and −15.6 °C (+4 °F) and 2007 kPa (291 psig) for nitrous oxide. Maximum time in transit may not exceed 120 hours.

(2) The following pressure control valve settings, design service temperatures and filling densities apply:

Pressure control valve setting maximum start—to discharge gauge pressure in kPa (psig)	Maximum permitted filling density (percent by weight)	
	Carbon dioxide, refrigerated liquid	Nitrous oxide, refrigerated liquid
724 kPa (105 psig)	108	104
1172 kPa (170 psig)	105	101
1586 kPa (230 psig)	104	99
2034 kPa (295 psig)	102	97
2483 kPa (360 psig)	100	95
3103 kPa (450 psig)	98	83
3723 kPa (540 psig)	92	87
4309 kPa (625 psig)	86	80
Design service temperature °C (°F)	−196 °C (−320 °F)	−196 °C (−320 °F)

* * * * *

§ 173.306 [Amended]

20. In § 173.306, paragraph (c) is removed and reserved.

21. Section 173.309 is added to read as follows:

§ 173.309 Fire extinguishers.

(a) Fire extinguishers charged with a limited quantity of compressed gas to not more than 1660 kPa (241 psig) at 21 °C (70 °F) are excepted from labeling (except when offered for transportation by air) and the specification packaging requirements of this subchapter when shipped under the following conditions. In addition, shipments are not subject to subpart F of part 172 of this subchapter, to part 174 of this subchapter except § 174.24 or to part 177 of this subchapter except § 177.817.

(1) Each fire extinguisher must have contents which are nonflammable, non-poisonous, and non-corrosive as defined under this subchapter.

(2) Each fire extinguisher must be shipped as an inner packaging.

(3) Nonspecification cylinders are authorized subject to the following conditions:

(i) The internal volume of each cylinder may not exceed 18 liters (1,100 cubic inches). For fire extinguishers not exceeding 900 ml (55 cubic inches) capacity, the liquid portion of the gas plus any additional liquid or solid must not completely fill the container at 55 °C (130 °F). Fire extinguishers exceeding 900 ml (55 cubic inches) capacity may not contain any liquefied compressed gas;

(ii) Each fire extinguisher manufactured on and after January 1, 1976, must be designed and fabricated with a burst pressure of not less than six times its charged pressure at 21 °C (70 °F) when shipped;

(iii) Each fire extinguisher must be tested, without evidence of failure or damage, to at least three times its charged pressure at 21 °C (70 °F) but not less than 825 kpa (120 psig) before initial shipment, and must be marked to indicate the year of the test (within 90 days of the actual date of the original test) and with the words "MEETS DOT REQUIREMENTS." This marking is considered a certification that the fire extinguisher is manufactured in accordance with the requirements of this section. The words "This extinguisher meets all requirements of 49 CFR 173.306" may be displayed on fire extinguishers manufactured prior to January 1, 1976; and

(iv) For any subsequent shipment, each fire extinguisher must be in compliance with the retest requirements of the Occupational Safety and Health Administration Regulations of the Department of Labor, 29 CFR 1910.157(e).

(4) Specification 2P or 2Q (§§ 178.33 and 178.33a of this subchapter) inner nonrefillable metal packagings are authorized for use as fire extinguishers subject to the following conditions:

(i) The liquid portion of the gas plus any additional liquid or solid may not completely fill the packaging at 55 °C (130 °F);

(ii) Pressure in the packaging shall not exceed 1250 kpa (181 psig) at 55 °C (130 °F). If the pressure exceeds 920 kpa (141 psig) at 55 °C (130 °F), but does not exceed 1100 kpa (160 psig) at 55 °C (130 °F), a specification DOT 2P inner metal packaging must be used; if the pressure exceeds 1100 kpa (160 psig) at 55 °C (130 °F), a specification DOT 2Q inner metal packaging must be used. The metal packaging must be capable of withstanding, without bursting, a pressure of one and one-half times the equilibrium pressure of the contents at 55 °C (130 °F); and

(iii) Each completed inner packaging filled for shipment must have been heated until the pressure in the container is equivalent to the equilibrium pressure of the contents at 55 °C (130 °F) without evidence of leakage, distortion, or other defect.

(b) Specification 3A, 3AA, 3AL, 4B, 4BA, 4B240ET or 4BW (§§ 178.36, 178.37, 178.46, 178.50, 178.51, 178.55 and 178.61 of this subchapter) cylinders are authorized for use as fire extinguishers subject to the following conditions:

(1) Cylinders must be used exclusively for fire extinguishing agents such as ammonium phosphate, sodium bicarbonate, potassium bicarbonate, potassium imido dicarboxamide and bromochlorodifluromethane or bromotrifluoromethane, which are commercially free from corroding components;

(2) Cylinders must be charged with a nonflammable, non-poisonous, noncorrosive, dry gas, having a dewpoint at or below minus 46.7 °C (minus 52 °F) at 101 kpa (1 atmosphere), to not more than the service pressure of the cylinder;

(3) Cylinders must be protected externally by suitable corrosion-resisting coatings; and

(4) The cylinders must be retested in accordance with § 173.34(e)(18).

22. In § 173.314, paragraph (g)(4) is added to read as follows:

§ 173.314 Requirements for compressed gases in tank cars.

* * * * *

(g) * * *

(4) Tank cars containing hydrogen chloride, refrigerated liquid, must be unloaded to such an extent that any residue remaining in the tank at a reference temperature of 32 °C (90 °F) will not actuate the safety relief device.

* * * * *

23. In § 173.318, a sentence is added at the end of the introductory text of paragraph (g), to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(g) * * * The abbreviation "OWTT" may be used in place of the words "One-way-travel-time" in the marking required by this paragraph.

* * * * *

§ 173.423 [Amended]

24. In § 173.423, Table 7 Activity limits, the entry "Liquids" is revised to read as follows:

§ 173.423 Table of activity limits—excepted quantities and articles.

* * * * *

TABLE 7.—ACTIVITY LIMITS FOR LIMITED QUANTITIES, INSTRUMENTS, AND ARTICLES

Nature of contents	Instruments and articles		Materials package limits
	Instrument and articles limits [1]	Package limits	
* * * * * * * * *			
Liquids:			
Tritiated water:			
<0.1 Ci/liter			1000 Curies.

TABLE 7.—ACTIVITY LIMITS FOR LIMITED QUANTITIES, INSTRUMENTS, AND ARTICLES—Continued

Nature of contents	Instruments and articles		Materials package limits
	Instrument and articles limits [1]	Package limits	
0.1 Ci to 1.0 Ci/liter			100 Curies.
>1.0 Ci/liter			1 Curie.
Other liquids	$10^{-3}A_2$	$10^{-1}A_2$	$10^{-4}A_2$.

[1] For mixture of radionuclides see § 173.433(b).

* * * * *

PART 175—CARRIAGE BY AIRCRAFT

25. The authority citation for part 175 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1807, 1808, 49 CFR part 1.

26. In § 175.10, paragraphs (a)(7), (a)(12) introductory text, the penultimate sentence of paragraph (a)(12)(ii), (a)(12)(v), (a)(19), and (a)(20) are revised, and paragraphs (a)(12)(vi) and (a)(25) are added to read as follows:

§ 175.10 Exceptions.

(a) * * *

(7) Oxygen, or any hazardous material used for the generation of oxygen, for medical use by a passenger, which is furnished by the aircraft operator in accordance with 14 CFR 121.574 or 135.91. For purposes of this paragraph, an aircraft operator that is not a certificate holder under 14 CFR part 121 or part 135, may apply this exception in conformance with 14 CFR 121.574 or 135.91 in the same manner as required for a certificate holder.

* * * * *

(12) Hazardous materials which are loaded and carried on or in cargo aircraft only, and which are to be dispensed or expended during flight for weather control, forest preservation and protection flood control, avalanche control purposes, or routine quality control testing of special fireworks manufactured for the Department of Defense, when the following requirements are met:

* * * * *

(ii) * * * The manual must be approved by the FAA Civil Aviation Security Field Office responsible for reviewing the operator's hazardous materials program or the FAA Civil Aviation Security Field Office in the region where the operator is located.

* * *

* * * * *

(v) When dynamite and blasting caps are carried for avalanche control flights, the explosives must be handled by, and at all times be under the control of, a qualified blaster. When required by State or local authority, the blaster must be licensed and the State or local authority must be identified in writing to the FAA Civil Aviation Security Field Office responsible for reviewing the operator's hazardous materials program or the FAA Civil Aviation Security Field Office in the region where the operator is located.

(vi) When special fireworks aerial illuminating flares, manufactured specifically for the DOD, are carried for in-flight routine quality control testing, the fireworks must be handled by, and at all times be under the control of, a qualified person who has been trained in accordance with a program approved by the local FAA Civil Aviation Security Field Office. The aircraft must be specially modified to conduct the testing operation and must be specifically approved for such operations by the local FAA Civil Aviation Security Field Office before the flight.

* * * * *

(19) A wheelchair or other battery-powered mobility aid equipped with a nonspillable battery, when carried as checked baggage, provided that—

(i) The battery meets the provisions of § 173.159(d) for nonspillable batteries;

(ii) Visual inspection including, where necessary, removal of the battery, reveals no obvious defects (however, removal of the battery from the housing should be performed by qualified airline personnel only);

(iii) The battery is disconnected and terminals are insulated to prevent short circuits; and

(iv) The battery is securely attached to the wheelchair or mobility aid, is removed and placed in a strong, rigid packaging that is marked "NONSPILLABLE BATTERY" (unless fully enclosed in a rigid housing that is properly marked), or is handled in accordance with paragraph (a)(20)(iv) of this section.

(20) A wheelchair or other battery-powered mobility aid equipped with a spillable battery, when carried as checked baggage, provided that—

(i) Visual inspection including, where necessary, removal of the battery, reveals no obvious defects (however, removal of the battery from the housing should be performed by qualified airline personnel only);

(ii) The battery is disconnected and terminals are insulated to prevent short circuits;

(iii) The pilot-in-command is advised, either orally or in writing, prior to departure, as to the location of the battery aboard the aircraft; and

(iv) The wheelchair or mobility aid is loaded, stowed, secured and unloaded in an upright position or the battery is removed, the wheelchair or mobility aid is carried as checked baggage without further restriction, and the removed battery is carried in a strong, rigid packaging under the following conditions:

(A) The packaging must be leak-tight and impervious to battery fluid. An inner liner may be used to satisfy this requirement if there is absorbent material placed inside of the liner and the liner has a leakproof closure;

(B) The battery must be protected against short circuits, secured upright in the packaging, and be packaged with enough compatible absorbent material to completely absorb liquid contents in the event of rupture of the battery; and

(C) The packaging must be labeled with a CORROSIVE label, marked to indicate proper orientation, and marked with the words "Battery, wet, with wheelchair."

* * * * *

(25) With approval of the aircraft operator, one small carbon dioxide cylinder fitted into a self-inflating life-jacket, plus one spare cartridge, may be carried by a passenger or crew member in checked or carry-on baggage.

* * * * *

27. In § 175.25, the section heading and paragraph (a) introductory text are revised to read as follows:

§ 175.25 Notification at air passenger facilities of hazardous materials restrictions.

(a) Each aircraft operator who engages in for-hire transportation of passengers shall display notices of the requirements applicable to the carriage of hazardous materials aboard aircraft, and the penalties for failure to comply with those requirements. Each notice must be legible, and be prominently displayed so that it can be seen by passengers in locations where the aircraft operator issues tickets, checks baggage, and maintains aircraft boarding areas.

* * * * *

28. Section 175.26 is added to read as follows:

§ 175.26 Notification at cargo facilities of hazardous materials requirements.

(a) After September 30, 1994, each person who engages in the acceptance or transport of cargo for transportation by aircraft shall display notices, at each facility where cargo is accepted, to persons offering such cargo of the requirements applicable to the carriage of hazardous materials aboard aircraft, and the penalties for failure to comply with those requirements. Each notice must be legible, and be prominently displayed so that it can be seen. At a minimum, each notice must communicate the following information:

(1) Cargo containing hazardous materials (dangerous goods) for transportation by aircraft must be offered in accordance with the Federal Hazardous Materials Regulations (49 CFR parts 171–180).

(2) A violation can result in civil penalties of up to $25,000 and criminal penalties of up to $500,000 and 5 years imprisonment.

(3) Hazardous materials (dangerous goods) include explosives, compressed gases, flammable liquids and solids, oxidizers, poisons, corrosives and radioactive materials.

(b) The information contained in paragraph (a) of this section must be printed:

(1) Legibly in English, and, where cargo is accepted outside of the United States, in the language of the host country; and

(2) On a background of contrasting color.

(c) Size and color of the notice are optional. Additional information, examples, or illustrations, if not inconsistent with required information, may be included.

(d) Exceptions: Display of a notice required by paragraph (a) of this section is not required at:

(1) An unattended location (e.g., a drop box) provided a general notice advising customers of a prohibition on shipments of hazardous materials through that location is prominently displayed; or

(2) A customer's facility where hazardous materials packages are accepted by a carrier.

29. The introductory text preceding Table 1 in paragraph (a) of § 175.78 is revised to read as follows:

§ 175.78 Stowage compatibility of cargo.

(a) For stowage on an aircraft, in a cargo facility, or at any other area at an airport designated for the stowage of hazardous materials, packages containing hazardous materials which might react dangerously with one another may not be placed next to each other or in a position that would allow a dangerous interaction in the event of leakage. As a minimum, the segregation prescribed in the following Table must be maintained.

* * * * *

30. In § 175.700, two sentences are added between the first and second sentence of paragraph (b) to read as follows:

§ 175.700 Special limitations and requirements for Class 7 (radioactive) materials.

* * * * *

(b) * * * In addition to the reporting requirements of § 175.45, the carrier must notify the shipper at the earliest practicable moment following any incident in which there has been breakage, spillage or suspected radioactive contamination involving shipment of a Class 7 (radioactive) material. In no instance may the notification be later than the close of business of the following workday.

* * *

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

31. The authority citation for Part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR part 1.

32. Section 177.804 is revised to read as follows:

§ 177.804 Compliance with Federal Motor Carrier Safety Regulations.

Motor carriers and other persons subject to this part shall comply with 49 CFR parts 390 through 397 (excluding §§ 397.3 and 397.9) to the extent those regulations apply.

33. In § 177.806, paragraph (b) is revised to read as follows:

§ 177.806 U.S. Government material.

* * * * *

(b) Shipments of hazardous materials, made by or under the direction or supervision of the U.S. Department of Energy (DOE) or the Department of Defense (DOD), and which are escorted by personnel specifically designated by or under the authority of those agencies, for the purpose of national security, are not subject to the requirements of this subchapter. For transportation by motor vehicle or rail car, the escorts must be in a separate transport vehicle from the transport vehicle carrying the hazardous materials that are excepted by this paragraph. A document certifying that the shipment is for the purpose of national security must be in the possession of the person in charge of providing security during transportation.

PART 178—SPECIFICATIONS FOR PACKAGINGS

34. The authority citation for part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808; 49 CFR part 1.

35. In § 178.251–2, paragraph (a) is revised to read as follows:

§ 178.251–2 Materials of construction.

(a) Except for gaskets, pressure relief devices, valve seats, liners, linings, and caps or plugs used as secondary closing devices over discharge openings, materials of construction must be metal.

* * * * *

Issued in Washington, DC on September 16, 1993, under authority delegated in 49 CFR part 1.

George W. Tenley, Jr.,

Acting Administrator, Research and Special Programs Administration.

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